



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** H H & K Builders, Inc.

**File:** B-238095

**Date:** February 23, 1990

Don Hecht, for the protester.  
JoAnn Renfrow, for the interested party, J & G Landscaping.  
Colonel Herman A. Peguese, Department of the Air Force, for the agency.  
Stephen J. Gary, Esq. and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Allegation that a firm is ineligible for award because its sole owner's husband is a government employee is denied; agency reasonably concluded there was sufficient separation of ownership and control of the firm, on the one hand, and the performance of unrelated duties by the government employee on the other hand, to preclude any actual or apparent conflict of interest.

### DECISION

H H & K Builders, Inc., protests the award of any contract to J & G Landscaping, the apparent low bidder under invitation for bids (IFB) No. F32605-89-B-0027, issued by the Department of the Air Force for grounds maintenance services at Grand Forks Air Force Base in North Dakota. The protester asserts that J & G, which is solely owned by JoAnn Renfrow, is ineligible for award because Mrs. Renfrow's husband is a government employee, and the marital relationship creates an impermissible conflict of interest.

We deny the protest.

According to the protester, since Mr. Renfrow is employed by the Air Force at Grand Forks Air Force Base, an award to the firm would violate Federal Acquisition Regulation (FAR) § 3.601 and Air Force Regulation (AFR) 30-30 (Standards of

047894/140761

Conduct, May 26, 1989) with regard to conflicts of interest. The FAR provides:

"3.601 Policy

. . . [A] contracting officer shall not knowingly award a contract to a . . . business concern or other organization owned or substantially owned or controlled by one or more Government employees. This policy is intended to avoid any conflict of interest that might arise between the employees' interests and their Government duties, and to avoid the appearance of favoritism or preferential treatment by the Government toward its employees."

The AFR, at paragraph 3.b, provides:

"Air Force personnel must not take part in any personal, business, or professional activity or receive or retain any direct or indirect financial interest that places them in a position of conflict between their private interests and the public interests of the United States and that relates to their responsibilities as Air Force personnel or to the duties or responsibilities of their Air Force jobs. For purposes of this prohibition, the private interests of a spouse . . . are treated as private financial interests of Air Force personnel."

According to the protester, Mr. Renfrow, who is employed by the Civil Engineering Squadron at the base, has control of the base lagoon area, which is a major element of work for the grounds maintenance contractor, and would therefore be involved in inspecting and assigning work under the contract. Further, the protester states, Mr. Renfrow would benefit directly from his wife's income from the contract and would, as her spouse, have a legal interest in the company. Consequently, the protester concludes that an award of the contract to J & G would constitute a violation of the regulations pertaining to conflicts of interest.

We disagree.

As a general matter, we have recognized that the responsibility for determining whether a firm competing for a contract should be excluded from the competition in order to avoid actual or apparent favoritism or preferential treatment rests primarily with the contracting agency. See Revet Env't & Analytical Laboratories, Inc., B-221002.2, B-221003.2, July 24, 1986, 86-2 CPD ¶ 102. Similarly, we

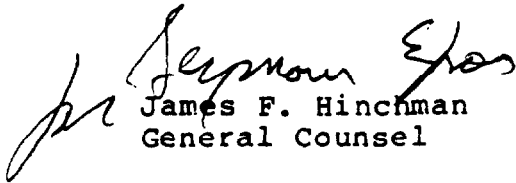
have held that whether or not an agency's established rules of conduct have been violated is a matter of policy for resolution by the agency, not this Office. See Big Sky Resource Analysts; Paul Ronaldo and Norman Fortunate, B-224888, B-224888.2, Jan. 5, 1987, 87-1 CPD ¶ 9. We will defer to the agency's judgment in these matters so long as its determination is reasonable. See John Peeples, B-233167, Feb. 21, 1989, 89-1 CPD ¶ 178.

Here, the Air Force reports that its investigation shows Mr. Renfrow has no control over J & G, and has no share of ownership in the company or any interest in its assets or liabilities. Further, the agency states that, contrary to the protester's suggestion that Mr. Renfrow has control of areas relevant to the contract, he in fact holds only a non-supervisory position as a utility systems repairer-operator, with duties limited to the base's water demineralization plant, sewage disposal system, and water distribution system; these duties, according to the Air Force, neither directly nor indirectly involve the identification of work elements or the inspection or acceptance of services to be provided under the contract. In sum, the agency concludes, there is a complete separation between the ownership and control of the corporation, which resides exclusively with Mrs. Renfrow, and Mr. Renfrow's performance of unrelated duties as a government employee.

The protester has provided no rebuttal to the agency's findings, other than to suggest that a conflict of interest is inevitable where there is a relationship such as the Renfrows's. However, a familial relationship in and of itself is not a sufficient basis to find either an actual conflict of interest or an impermissible appearance of a conflict. See, e.g., Information Ventures, Inc., B-221287, Mar. 10, 1986, 86-1 CPD ¶ 234 (husband and wife); J. Allen Grafton, B-212986, Mar. 5, 1984, 84-1 CPD ¶ 263 (father and son). Rather, the criterion is whether the agency reasonably found a sufficient separation of ownership and control to preclude actual or potential conflicts of interest. J. Allen Grafton, B-212986, supra. Here, we find that the Air Force's determination that an award to J & G would not constitute an award to a firm "owned or substantially owned or controlled by one or more Government employees," FAR § 3.601, was reasonably based on such a finding. Similarly, based on the separation of ownership of the company from Mr. Renfrow's duties as an Air Force employee, we find that the agency's determination that its conflict of interest

rules would not be violated by the award also was reasonable. See Big Sky Resource Analysts; Paul Ronaldo and Norman Fortunate, B-224888, B-224888.2, supra.

The protest is denied.

  
James F. Hinchman  
General Counsel